



**[BILLING CODE: 6750-01S]**

**FEDERAL TRADE COMMISSION**

**[File No. 121 0133]**

**Corning Incorporated; Analysis of Proposed Agreement Containing Consent Order to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

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**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

**DATES:** Comments must be received on or before November 30, 2012.

**ADDRESSES:** Interested parties may file a comment at

<https://ftcpublic.commentworks.com/ftc/corningconsent> online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Corning Becton, File No. 121 0133" on your comment and file your comment online at <https://ftcpublic.commentworks.com/ftc/corningconsent>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Michael Moiseyev (202-326-3106), or

Stephanie C. Bovee (202-326-2083), FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 31, 2012), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 30, 2012. Write "Corning Becton, File No. 121 0133" on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or

foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>1</sup> Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/corningconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “Corning Becton, File No. 121 0133” on your

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<sup>1</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 30, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

## **Analysis of Agreement Containing Consent Order to Aid Public Comment**

### **I. Introduction**

The Federal Trade Commission ("Commission") has accepted from Corning Incorporated ("Corning"), subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement"), which is designed to remedy the anticompetitive effects of Corning's proposed acquisition of substantially all of the assets of Becton, Dickinson and Company's Discovery Labware Division ("BDDL"). Under the terms of the proposed Consent Agreement, Corning would be required to supply Sigma-Aldrich Co., LLC ("Sigma Aldrich") with tissue culture treated ("TCT") dishes, multi-well plates, and flasks on an interim basis, and in the future and at Sigma Aldrich's request, provide Sigma Aldrich with the assets and assistance necessary to independently manufacture these products.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments; any comments received will also become part of the public record. After

thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make it final.

Pursuant to an agreement dated April 12, 2012, Corning proposes to acquire substantially all of the assets of BDDL. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the North American markets for TCT multi-well plates, dishes, and flasks used in cell culture applications. The proposed Consent Agreement will remedy the alleged violations by replacing the competition that would otherwise be eliminated by the acquisition.

## **II. The Parties**

Headquartered in Corning, New York, Corning is a leading manufacturer of specialty glass, plastics, and ceramics for a variety of applications. Corning's Life Sciences division is a leading manufacturer of consumable plastic labware including TCT cell culture multi-well plates, dishes, and flasks.

Discovery Labware, Inc., a division of Becton, Dickinson and Company, is headquartered in Bedford, Massachusetts. Becton, Dickinson and Company is a global medical technology company that supplies consumable plastic labware through its Discovery Labware division including TCT cell culture multi-well plates, dishes, and flasks.

## **III. The Products and Structure of the Markets**

TCT cell culture vessels are plastic containers that are essentially surfaces upon which researchers cultivate cells. These products are purchased primarily by pharmaceutical companies, bio-technology companies, and academic institutions and used by cell culture

laboratories. Tissue culture treatment alters the intrinsic qualities of the plastic to promote cell adhesion so that cells are more likely to grow and spread. Other advanced coatings and treatments exist, but these alternatives typically are used only in specialized applications, and are not viable substitutes for standard TCT cell culture vessels.

North America is the relevant geographic area in which to analyze the effects of the proposed acquisition in the TCT cell culture markets.

Each TCT cell culture market is highly concentrated. Corning and BDDL are the leading suppliers in each market. Other suppliers such as Thermo Fisher and Greiner Bio-One participate in each market, but no other suppliers are the size of Corning or BDDL.

#### **IV. Effects of the Acquisition**

The Proposed Acquisition would eliminate actual, direct, and substantial competition between Corning and BDDL in the markets for TCT cell culture vessels. By increasing Corning's share in each market, while at the same time eliminating its most significant competitor, an acquisition of BDDL likely would allow Corning to unilaterally charge significantly higher prices for TCT cell culture vessels.

#### **V. Entry**

Entry into the relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to prevent the anticompetitive effects of the proposed acquisition. Entry would not take place in a timely manner because of the significant time required to gain a reputation among research scientists as a supplier of quality products. Given the time needed to enter the relevant markets, relative to the sizes of those markets, it is unlikely that an entrant could obtain sufficient sales to make the investment profitable. As a result, new entry or repositioning by other firms sufficient to ameliorate the competitive harm from the proposed

acquisition is not likely to occur.

## **VI. The Consent Agreement**

The proposed Consent Agreement remedies the acquisition's likely anticompetitive effects in the TCT cell culture markets. The Consent Agreement requires Corning to supply Sigma Aldrich, on an interim basis, with Corning-manufactured TCT cell culture products until Sigma Aldrich has developed independent manufacturing capabilities. This supply agreement will enable Sigma Aldrich to immediately sell TCT cell culture products under its own brand name. The Consent Agreement also requires that Corning provide in the future, at Sigma Aldrich's request, technical assistance necessary to begin manufacturing TCT cell culture multi-well plates, flasks, and dishes in a manner substantially similar to the manner in which Corning manufactures these products today.

Headquartered in St. Louis, Missouri, Sigma Aldrich is a leading life sciences company that sells a variety of products used in pharmaceutical research. TCT cell culture multi-well plates, flasks, and dishes will complement Sigma Aldrich's leading position in adjacent markets, including media and reagents used in the cell culture process. Sigma Aldrich has an existing infrastructure for the marketing and sales of its laboratory products, and therefore is well-positioned to replace the competition that will be lost as a result of the proposed transaction.

The Commission may appoint an interim monitor to oversee the supply of products and the future transfer of assets at any time after the Consent Agreement has been signed. In order to ensure that the Commission remains informed about the status of the proposed remedy, the proposed Consent Agreement requires the parties to file periodic reports with the Commission until the Decision and Order terminates.

The purpose of this analysis is to facilitate public comment on the proposed Consent

Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission

Donald S. Clark  
Secretary.

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